IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-10-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 20319 of 2004

M. Thirunavukkarasu .. Petitioner

Versus

1. The General Manager
   Tamilnadu State Transport
   Corporation
   (Kumbakonam Division III) Ltd
   Maruthupathy, Managiri Road
   Karaikudi - 630 307
   Sivagangai District

2. The Managing Director
   Tamilnadu State Transport
   Corporation
   (Kumbakonam Division III) Ltd
   Maruthupathy, Managiri Road
   Karaikudi - 630 307
   Sivagangai District .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. M. Thirunavukarasu
Party-in-Person
For Respondents : Mr. Rajnish Pathiyal

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ORDER

The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in TNSTC/TS/D6/32 dated 22.12.2003 and confirmed by the second respondent in Ref.No. TNSTC/Kumb/ Thovoo/95 dated 26.04.2004, quash the same and consequently direct the respondents to reinstate the petitioner with all backwages and other service benefits.

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2. The petitioner appeared party in person and he submitted as follows:-

The petitioner was appointed as driver in the respondents corporation on 17.10.1991 and he received several accident free awards. On 04.05.2002 when he was driving the bus bearing No. TN-63-0675 from Sivagangai to Karaikudi, at about 7.55 p.m. while nearing Kundrakudi, in order to avoid head on collision with the vehicle coming in the opposite direction, he applied sudden brake, however, the bus dashed the stationary jeep and a private bus parked on the other side of the road. In the said accident, two persons died on the spot and four persons were injured, but none of the passengers boarded on the bus driven by the petitioner were affected or suffered any injuries. Thereafter, the first respondent placed the petitioner under suspension from 07.05.2002 and a charge memo was issued on 13.05.2002, for which the petitioner has submitted a reply dated 18.05.2002 denying the charges. Not satisfied with the reply submitted by the petitioner, an enquiry officer was appointed, who delayed in completing the enquiry, however submitted his report on 29.06.2002. In the meantime, the first respondent has revoked the order of suspension on 10.06.2002. On receipt of the enquiry report, the first respondent issued second show cause notice dated 16.07.2002 calling upon the petitioner to submit as to why he should not be dismissed from service, for which the petitioner has submitted his reply on 28.07.2002 denying all the charges and submitted that the accident occurred due to mechanical defect, however, the first respondent has erroneously passed the order dated 22.12.2003 dismissing the petitioner from service. Aggrieved by the said order of dismissal, the petitioner has filed an appeal before the second respondent on 17.01.2004, who, without properly considering the case of the petitioner rejected the appeal by its order dated 26.04.2004. The respondents also filed Approval Petition No.404 of 2003 before the Joint Commissioner of Labour (Conciliation) Chennai under Section 33 (2) (b) of the Industrial Disputes Act, 1947 and the said authority has passed an order dated 22.12.2006 erroneously according approval for the dismissal. The charges levelled against the petitioner was that he driven the vehicle in a rash and negligent manner, but the enquiry officer, in his report gave a finding that he drove the bus in a sleepy mood, hence, the accident occurred. The respondents failed to note that the petitioner has reported certain defects in the gear box of the bus and written it in the day to day maintenance register but the authorities without carrying out the repairs directed the petitioner to ply the vehicle. Thus, the accident occurred due to the mechanical defect for which the petitioner not to be held responsible, which facts were not at all considered by the enquiry officer or the respondents. The stationary jeep was on the other side of the road without light when the petitioner applied sudden brake to avoid head on collision with the vehicle came in opposite direction, but his bus was dragged to the other side due to mechanical defect and hit against the stationary jeep and bus, however no one in the bus driven by the petitioner affected or sustained injuries, which itself show that the bus was driven with due care and diligence by the petitioner. The first respondent imposed only lesser punishment to the drivers who involved in similar accidents as mentioned below:-

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S.No.	Name of the Driver	Persons died	Punishment imposed
1)	A. Maria Joseph No.86228 Karaikudi Branch	Two cyclists died at the spot at Amaravathi Pudhur	No punishment
2)	S. Prem Sahib No.86036 Karaikudi Branch	Three persons died while travelling in Maruthi Car at Mathur near Trichy	Stoppage of increment for three years
3)	Thavasi Driver No.83116 Sivaganga Branch	Two Motor Cyclists died in the spot at Manamadurai	Stoppage of increment for two years
4)	S. Durairaj No.96078 Karaikudi Branch	Two Constables died while travelling in a car at Melur, Madurai	- do -
5)	K. Kandasamy No.94046 Karaikudi Branch	Two pedestrians belonging to MDMK Political party died at Madurai	- do -

The above said facts prove that the petitioner alone was discriminated by the respondents and inflicted with major punishment of dismissal from service for extraneous reasons. The order of dismissal passed by the first respondent is not based on the enquiry report relating to the present charge memo but only based on the previous punishments imposed on the petitioner and if the first respondent want to rely on the said previous punishments, he should have been given an opportunity to explain his case, but no such opportunity was given to him, hence, the order of dismissal passed by the first respondent is violative of principles of natural justice. The first respondent has passed a non-speaking order by relying upon the earlier punishments without discussion about the present charges or the evidence adduced by both sides and the second respondent/appellate authority also, in the absence of any valid evidence erroneously confirmed the order passed by the first respondent and prayed for quashing of both the orders.

3. The learned standing counsel appearing for the respondents/corporation submitted as follows:-

The petitioner, while driving the bus bearing No. TN-63-0675 caused fatal accident on 04.05.2002 in a trip from Sivagangai to Karaikudi at Kundrakudi. The said accident occurred due to the rash and negligent driving of the petitioner in which two persons died on the spot and four persons sustained injuries and all the vehicles involved were damaged. The petitioner was placed under suspension immediately, a charge memo was issued for which he submitted his explanation, which was not satisfactory, hence, a domestic enquiry was ordered. The enquiry officer appointed by the corporation conducted detailed enquiry and submitted his

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report that charges against the petitioner were proved. The first respondent, considering the report of the enquiry officer and the evidence on record found that the charges against the petitioner is proved. Thereafter, the first respondent has issued second show cause notice for which the petitioner also submitted his explanation and thereafter, the order of dismissal from service was passed by the first respondent. Prior to the said accident, the petitioner visited punishments of warning on four occasion; recovery order was passed on three occasion; suspended for misbehaviour on one occasion and increment cut for misbehaviour. Considering the past records of the petitioner and the gravity of the offence committed by him, the first respondent has rightly passed the order of dismissal dated 22.12.2003 and the same was confirmed by the second respondent. The respondents have also filed Approval Petition No. 404 of 2003 before the Joint Commissioner of Labour (Conciliation) Chennai, who after careful consideration of the evidence on record accorded approval by order dated 22.12.2006 stating that proper domestic enquiry was conducted by the respondents in accordance with the relevant standing order after following the principles of natural justice; that prima facie case for dismissal based on legal evidence adduced in the domestic enquiry, rejected the plea that respondents adopted unfair labour practice and one month wage was paid to the petitioner and the respondents have applied for approval within seven days. It is incorrect to state that the petitioner has received several accident free awards, the fact remains that during the year 2001-2004, he has received only one accident free award.

4. This Court carefully considered the argument of both sides and perused the records. The charge against the petitioner was on 04.05.2002, while he was driving the vehicle bearing No. TN-63-0675 from Sivagangai to Karaikudi, at about 7.57 p.m. when the bus was in between Kundrakudi and Padharakudi, driven in a rash and negligent manner, crossed the central line of the road, run over the stones which were kept 25 feet away from the place where a stationary jeep and bus were parked, as a mark to show that they were parked for carrying out repairs and dashed against both. In the said accident, two persons who were carrying out the repairs of the bus died on the spot and four others accompanied them were injured and damages were caused to the private bus to the tune of Rs.5,000/- and also to the bus belonging to the respondents/corporation thereby committed the offence mentioned in clause 16 (k) and (q) of the standing orders of the corporation. After the said accident, one Murugan, Branch Manager, who was later examined as PW1, inspected the scene of occurrence at 12.00 Noon on 05.05.2002 and submitted his report stating that the accident took place due to the rash and negligent driving of the petitioner. Pursuant to the said report, charge memo dated 13.05.2002 was issued to the petitioner calling upon him to submit his explanation and the petitioner also submitted his explanation dated 18.05.2002.

5. In the explanation, the petitioner has denied all the charges and stated that a vehicle which came in the opposite direction was driven rashly and negligently, in a zig zag manner with bright headlights, in order to avoid head on collision, he drove the bus to the right side of the road, slowed down it for a while so that the said vehicle proceeding from opposide side be allowed to cross, but the brake efficiency was in poor condition, it dashed against the jeep and the bus; that seven days prior to the occurrence, the petitioner has written in the day-to-day

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register maintained by the respondents corporation about the mechanical defect and that one Premsa Sahib, another driver of the said bus also reported mechanical defect, but the Corporation Assistant Engineer Selvaraj neither taken steps to repair it nor gave spare bus and requested the petitioner to ply the same by adjusting it. Even on the date of accident, the brake condition was not good, hence, the petitioner was constrained to approach a mechanic, who adjusted it, however, it was not corrected fully, thus, the said mechanical defect was the reason for the accident; that within half an hour of the accident, one Bothalingam, who was incharge of night duty of the corporation workshop came to the spot and inspected, who was the correct person to submit the basic report, but the respondents/management deliberately sent the said Murugan, Branch Manager, who was enemical to him to submit basic report which was relied on for issuing the charges.

6. It is true that in the explanation submitted by the petitioner the above mentioned averments are found mentioned, but during the enquiry, he has not chosen to examine the said Bothalingam or Co-driver Premsa Sahib nor summoned the documents relied on by him namely day-to-day maintenance register etc., Even though the petitioner was allowed to have an Assistant to represent him, he strangely refused to avail the same. The defence taken by the petitioner was that the bus was not in on road condition, which was the reason for the accident, if so, it is not known as to how he has chosen to ply it or continued the trip. It is alleged by the petitioner that he saw a vehicle coming in the opposite direction with bright headlights in a zig zag manner, to avoid head on collision, he crossed the central line, went to the right side of the road to slow down near the jeep which was parked on the right side of the road and to allow the said vehicle to cross. No driver take such an erroneous decision, if at all, to avoid accident, the vehicle could be taken to the left extreme.

7. One another adverse factor found in the explanation submitted by the petitioner was the brake mark of the bus found in the road was in straight line upto the place where the jeep was parked. The enquiry officer pointed out the said brake mark, coupled with the evidence of Murugan and came to a conclusion that the brake efficiency of the bus was good, hence, this Court is unable to accept the said contentions of the petitioner that the vehicle was not driven in a rash and negligent manner.

8. The enquiry officer gave opportunity to the petitioner to cross-examine the witnesses on the side of the respondents/corporation and based on their evidence gave a finding that the charges against the petitioner are proved, hence, this Court is of the view that the enquiry was proper and valid.

9. It is not in dispute that the petitioner was served with enquiry report along with second show cause notice and called upon to give his explanation. In the said second show cause notice, the first respondent has also pointed out the previous punishments visited by the petitioner and proposed the punishment of dismissal. It is incumbent upon the authority to give the delinquent at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishment or his bad record, it should be included in the second show cause notice so that he may be able to give his explanation. A delinquent must be given a

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reasonable opportunity not only to prove that he is not guilty of the charges levelled against him but also that the proposed punishment to be imposed is either not called for or is excessive. Therefore, it is necessary that the delinquent must be told of the ground on which it is proposed to take such action. If the grounds are not mentioned in the notice, it is impossible for him to predicate what is operating in the mind of the authority concerned in proposing a particular punishment, he would not be in a position to explain why he does not deserve any punishment at all or such punishment proposed is excessive. If the proposed punishment was based on the previous record of the delinquent and that was not disclosed in the notice, it would mean that main reason for proposed punishment was withheld from the knowledge of the delinquent. It would be no answer to suggest that delinquent must have had knowledge of the fact that his previous record would necessarily to be taken for consideration by the authorities in inflicting the punishment on him nor it would be a adequate answer to show that he know as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. AIR 1964 SC 506 (State of Mysore vs. Mache Gowda) In this case, as mentined above, in the second show cause notice, the previous punishments visited by the petitioner were indicated and explanation was called for from him, which is also in accordance with law.

10. The averment that other drivers involved in similar accidents were awarded with lesser punishment but the petitioner was awarded capital punishment of dismissal, which amounts to discrimination is concerned, each case has to be decided on its own merits, hence, the said comparison is also untenable in law.

11. The argument of the petitioner was that the first respondent has not passed a speaking order. In departmental proceedings, the Disciplinary authority is the sold Judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction need not normally interfere with those factual findings unless it finds that the recorded findings were based either or no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an Appellate Authority over the factual findings recorded during the departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Followed (Apparel Export Promotion Council vs. A.K. Chopra) AIR 1999 SC 625. This Court finds no such elements in this case.

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12. In view of the above discussion, this Court is of the view that interference of this Court is not warranted in the well considered order passed by the respondents, hence, the writ petition is dismissed. No costs.

rsh

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

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   Tamilnadu State Transport
     Corporation
   (Kumbakonam Division III) Ltd
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+1 cc to Mr.Rajnish Pathiyil, Advocate Sr.No.61183.

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